

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 716 - SB 1300

March 24, 2011

SUMMARY OF BILL: Creates the "Prescription Integrity Act of 2011" which regulates therapeutic substitutions of medications. Authorizes therapeutic substitution with the express prior authorization of the prescribing physician or other prescribing health care professional and with notice to the patient. Requires the dispensing pharmacist to, prior to making a therapeutic substitution, verbally request the patient to agree to a change to the prescription; verbally describe the proposed change that would be made to the prescription; verbally inform the patient of impact on the patient's out-of-pocket cost; and verbally inform the patient of any financial incentive the pharmacy or any of its employees will receive from the change to the prescription. Requires health plans, pharmaceutical benefit managers, and their agents to send a notification of request for medication change to a patient and to the patient's physician or other prescribing health care professional any time a therapeutic substitution is recommended. Requires health insurance premium payors and employers responsible for paying the health care premium or portions thereof to be notified of any therapeutic substitution programs adopted by health plans and pharmacy benefit managers. Requires the Commissioner of Commerce and Insurance to promulgate rules governing notifications of requests for therapeutic substitution. Requires the Board of Pharmacy to promulgate rules governing pharmacy collection and reporting of information on therapeutic substitutions. Requires the Board to develop formats for annual reporting of aggregate data on therapeutic switches and to report to the General Assembly at least once every legislative session regarding trends on therapeutic switches. Creates a civil penalty not to exceed \$25,000 for issuing, delivering, or causing to be issued or delivered a notification of request for therapeutic substitution that contains a misrepresentation or false statement or that is otherwise not in compliance with this Act.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$4,400/One-Time/Board of Pharmacy
\$60,100/Recurring/Board of Pharmacy
\$1,021,700/Recurring/General Fund**

Increase Federal Expenditures – \$2,003,800/Recurring

Other Fiscal Impact – According to the Department of Health, current Board of Pharmacy fee revenue is sufficient to cover the one-time (\$4,400) and recurring (\$60,100) expenditures for the statistician. As of June 30, 2010, the Board's cumulative balance was \$276,649.24.

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Assumptions:

- Under current law, a pharmacist or a health plan may request a new prescription from the prescriber when a health plan's formulary prefers another product.
- According to the Bureau of TennCare, the Bureau requests that prescribers switch new prescriptions to preferred products 1,752 times per month. Based on the experience with relaxed generic substitution requirements, the Bureau estimates that the requirements of the proposed legislation will reduce the number of switches to preferred products by 30 percent.
- The Bureau assumes that, on average, each pharmacy impacted by this legislation would average at least three prescription refills. The average net cost of preferred product is \$159.90 less than a non-preferred product. As a result, the annual increase in the Bureau's expenditures will be \$3,025,564 (1,752 substitutions x 12 months x 30% x 3 refills x \$159.90). Of this amount, \$1,021,733 will be state funds and \$2,003,831 will be federal funds at a 66.23 percent match rate.
- The Department of Commerce and Insurance will be responsible for promulgating rules governing notification and requests for therapeutic substitution and for receiving and investigating complaints associated with substitutions made against the health plans and pharmacy benefit managers that are not in compliance with this Act, including failure to comply with applicable notice requirements. Any cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- According to the Department of Health (DOH), any rule-making can be accomplished during regularly scheduled Board of Pharmacy meetings and can be accommodated within existing resources.
- DOH will hire one statistician to compile the data received from the pharmacies and to track trends and prepare reports to the General Assembly. Recurring costs associated with this position will be \$60,127, consisting of salary (\$32,910), benefits (\$13,017), administrative costs (\$7,900), office lease (\$4,100), network costs (\$1,600), and supplies (\$600). One-time costs will be \$4,400, consisting of office landscaping (\$2,700) and computer costs (\$1,700). According to DOH, the Board's current fees are sufficient to cover any costs incurred.
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. The Board had a balance of \$74,641.74 in FY09-10 and a deficit of \$59,776.49 in FY08-09. As of June 30, 2010, the Board's cumulative balance was \$276,649.24.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

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